

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 290 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

AMBICA CEMENT DEPOT  
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Appearance:

MR KG SHETH, AGP for Petitioners  
MR RC JANI for Respondent No. 1  
NOTICE SERVED for Respondent No. 2  
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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 16/06/2000

ORAL JUDGEMENT

1. The appellants herein are the original defendants  
nos. 1 and 2 being the State of Gujarat and the  
Collector, Mehsana District, Mehsana. Respondent no. 1 is

the original plaintiff and respondent no. 2 is the original defendant no. 3. This appeal has been filed by the original defendants nos. 1 and 2 against the judgment and decree dated 3/10/1979 rendered by the Ld. Civil Judge (S.D.), Mehsana in Special Civil Suit No. 112 of 1976. The operative portion of the order would read as under :-

"The confidential letter Ex. 47 dated 14/12/74 written by defendant no. 2 to defendant no. 3 suspending the plaintiff's stockistship and other proceedings of disallowing plaintiff's applications by an order dated 5/6/1976, etc. are hereby declared illegal, null and void, that the act of defendant no. 3 of discontinuing the supply of cement from 14/12/74 to plaintiff is also declared illegal, null and void, that it is declared that plaintiff's stockistship is continuing from 14/12/74 upto this date and that defendants nos. 1, 2 and 3 should start immediate supply of cement to the plaintiff, that defendants no. 1/2 are prevented from preventing defendant no. 3 from supplying the cement to plaintiff, that a decree is passed for Rs.10,000/- with 6% interest from the date of the suit till the date of payment and costs of the suit as against all the defendants and the stockistship of plaintiff is allowed to continue from the date of the suit by ordering defendants nos. 1, 2 and 3 to withdraw all their previous orders and that in respect of the period from the date of the suit a damage of Rs.761/- per month be given by defendants no. 1 to 3 to the plaintiff."

2. It would appear that the plaintiff filed the aforesaid suit against the defendants (in this judgment the parties are referred to by their original nomenclature) for obtaining reliefs of declarations with regard to continuation of contract of stockistship between the plaintiff and the defendant no.3, which was stopped by the defendant no. 3 as a consequence of letter dated 14/12/1974 issued by the defendant no.2, the Collector, Mehsana. It would further appear that the plaintiff has prayed for mandatory direction for continuation of the stockistship with consequential relief of supply of cement as per the agreement of stockistship by the defendant no.3 to the plaintiff without there being obstruction from any body including the first two defendants. The plaintiff has also prayed

for damages in the sum of Rs.10,000/- against the defendants for stopping the supply of cement by suspending/cancelling the stockistship.

3. The plaintiff asserted in the plaint that there was a cement order in operation by virtue of section 3 of the Essential Commodities Act, 1955 (for short 'the Act') and the defendant no.2, the Collector, Mehsana was informed by the Supply Inspector that the plaintiff committed some irregularities in the business of cement. This he did because he had an occasion to inspect the cement depot of the plaintiff on 30/7/1974. The defendant no. 2 issued notice mentioning nine irregularities violating the provision of the Cement Control Order. The plaintiff has averred that the plaintiff gave satisfactory explanation to the said notice and, therefore, no action in accordance with the provisions of the Act was taken. The plaintiff has, however, asserted that the house of his wife Diwaliben was under construction and as required for that work the plaintiff sold 48 bags of cement to his wife. 5 bags of cement were already lying at the site. Accordingly there were in all 53 cement bags, which the Supply Inspector seized. The Collector also issued notice in that respect and it is the say of the plaintiff that plaintiff gave satisfactory explanation to the notice. Yet the Collector saw to the cement bags being confiscated and sold by having recourse to section 6 of the Act. The plaintiff's wife Diwaliben filed Criminal Appeal No.86/1974 against the said order in the Sessions Court at Mehsana, which Court set aside the said order by judgment and order dated 28/7/1975. In the meantime the defendant no. 2, the Collector issued confidential letter dated 14/12/1974 to the defendant no. 3 for suspending/cancelling stockistship of the plaintiff. According to the plaintiff such an action of the defendant no. 2 was illegal, unauthorised and in violation of natural justice. As a result of such an action of written letter dated 14/12/1974, the defendant no. 3 company suspended plaintiff's licence as a stockist of cement and has stopped supply of cement from that date; the plaintiff's business in cement was closed. The plaintiff has thus suffered loss of Rs.1,000/- per month.

4. In the background of what has been asserted by the plaintiff as stated above, the plaintiff has further averred that the defendant no. 2 had authority to take action u/S. 7 of the Act in case plaintiff was found to have committed any breach of the control order u/S. 3 of the Act, but the defendant no. 2 had no power or

authority to cancel or suspend the cement stockistship of the plaintiff. Even if such an authority or power was with the defendant no. 2, he ought to have issued notice to the plaintiff and ought not to have written to the defendant no. 3 for cancellation of stockistship. By virtue of section 7 of the Act only if a person has committed second offence, his dealership/stockistship could be suspended for a period of six months or more. That being not the position, the action of the defendant no. 2 was not legal and, therefore, the plaintiff was entitled to file the suit as aforesaid.

5. The first two defendants being the appellants herein, filed written statement exh. 25; whereas the defendant no. 3 remained ex-parte. The defendants denied the allegations made in the plaint. The defendants had specifically pleaded that the suit is not legally tenable. They have asserted that the letter written by the defendant no. 2 on or around 14/12/1974 was correct. The letter was never confidential and the plaintiff was entitled to copy thereof. It has been asserted that it was entirely at the discretion of defendant no. 3 to continue the plaintiff as its stockist or not to continue the plaintiff as its stockist and if the defendant no. 3 has suspended or cancelled the licence of stockistship, no suit is legally competent on that count against the defendants. It has been asserted that cement has been considered to be an essential commodity under section 25 of Schedule-I of Gujarat Essential Articles (Dealers Regulation) Order, 1971. The Civil Supply Department of Government had issued instructions for distribution of cement by its order dated 30/4/1973. Accordingly the accounts of stockists of cement were ordered to be checked regularly. The Supply Inspector visited the cement depot of the plaintiff on 30/7/1974 and following irregularities have been found :-

- (a) Stock Patrak of cement was maintained only from 14/3/73, and the said patrak did not bear signature and stamp of Mamlatdar,
- (b) The stock of cement was kept with fertilizers and insecticides,
- (c) Bills Nos. 3003 and 3004 were not given to customers and kept in the bill book.
- (d) The order of Mamlatdar, Visnagar dtd. 28/6/74 for distribution of cement as per 20% and 60% in the Registers, is not followed and the plaintiff has sold the cement at his own sweet will,
- (e) Purchasers' signatures were not taken in the Bill Book

- (f) The stock Patrak of cement is not sent to the Mamlatdar, Visnagar.
- (g) The Mamlatdar, Visnagar, has by his order dtd. 25/6/74, granted 18 bags of cement to Diwaliben, but instead, 48 bags were given to her, (the said Diwaliben is the wife of the plaintiff).

Hence show cause notice dated 21/8/1974 was issued and after granting personal hearing and considering the explanation it was decided to file complaint against the plaintiff and to get his stockistship suspended as it was not desirable to continue him as stockist for cement. So complaint was filed in Visnagar Police Station (C.R. No. 184/74), which was not decided till the filing of the written statement and the letter was written to the Executive Officer of the defendant no.3. It has been asserted that the plaintiff wrote applications dated 11/8/1975 and 14/2/1976 to the Government of Gujarat, but the Government through its Supply Department rejected the same vide letter dated 5/6/1976.

During the inquiry 53 bags of cement were recovered from the house of Diwaliben, wife of the plaintiff, and the same were attached. After issuance of show cause notice, the plaintiff appeared and produced explanation in writing for his wife. As the explanation was not proper, the same was not accepted and order of confiscation was passed. An appeal against the said order was filed in the Court of Sessions at Mehsana and on technical ground the appeal was allowed. Hence, sale proceeds of confiscated 53 bags of cement were paid over to said Diwaliben, the plaintiff's wife.

6. In view of the irregularities noted in the notice issued to the plaintiff and particularised in the written statement and in view of other defences raised, the defendants nos. 1 and 2 claimed dismissal of the suit with costs.

7. On the aforesaid pleadings the learned trial Judge framed following issues :-

- (1) Whether the Collector's instruction and/or Order to defendant no. 3 to suspend and/or cancel the dealership of plaintiff as a stockists of cement of defendant no. 3 in December 1974 is legal and valid as alleged by defendants nos. 1 and 2 ?
- (2) Whether the said instructions and/or order of

defendant no. 2 to defendant no. 3 is illegal, ultra vires and void and opposed to all cause of natural justice ?

(3) Whether the defendants nos. 1 and 2 had right to suspend and/or cancel the dealership and whether the plaintiff has suffered a loss of Rs.24,000/- by the ultra vires act or order of the Collector?

(4) Whether the plaintiff is entitled to a mandatory injunction against defendants nos. 1, 2 and 3 ordering defendant no.3 to revive the dealership of plaintiff and ordering defendants nos. 1 and 2 to permit the plaintiff to sell and stock cement of defendant no. 3 ?

(5) Whether a decree for Rs.10,000/- as loss incurred by the plaintiff be passed against defendants nos. 1, 2 and 3 with a decree of Rs.1,000/- p.m. from date of the suit ?

(6) Is the suit time barred ?

(7) Is the suit tenable in law ?

(8) What order and decree ?

Upon appreciation of the evidence the learned trial Judge held that the Collector's instruction/order to defendant no. 3 to suspend and/or cancel the dealership/stockistship of the plaintiff in December 1974 was not legal and valid and was ultra vires, void and opposed to principles of natural justice. Holding the other issued in favour of the plaintiff to the extent stated in the judgment, the learned trial Judge passed decree in terms of the aforesaid order.

8. The Government has challenged the aforesaid judgment and decree in this appeal. However, the defendant no. 3 has not filed appeal against the judgment and decree. It may be noted that the learned trial Judge has decided issue no. 7 regarding whether the suit is tenable in law, holding that the contract between the plaintiff and defendants nos. 1 and 2 has been cancelled on account of the action of defendant no.3 and that by virtue of such tortious act the plaintiff would be entitled to sue the defendant nos. 1 and 2 also. It would, however, clearly appear that the learned trial Judge and for that matter all concerned have failed to notice section 15 of the Act. In reply, Ld. Advocate appearing for the first respondent (plaintiff) submitted

that this appeal might be decided only on the maintainability of the suit in so far as the appellants (first two defendants) are concerned. Hence, it would be appropriate to deal with the submissions made on that count.

9. Mr. Sheth, Ld. A.G.P. placed reliance upon the provision contained in section 15 of the Act, which would read as under :-

"15. Protection of action taken under Act.-

(1) No suit, prosecution or other legal proceeding shall, lie against any person for anything which is in good faith done or intended to be done in pursuance of any order made under Section 3.

(2) No suit or other legal proceeding shall lie against the Government for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of any order made under Section 3."

Mr. Sheth also submitted that the plaintiff ought to have produced the agreement of stockistship/dealership before claiming reliefs based on the tort of procuring breach of contract between the plaintiff on one hand and the defendant no. 3 on the other hand. Mr. Sheth submitted that even from the pleadings noted hereinabove, the plaintiff's remedy would have been against the defendant no. 3 if in fact the defendant no. 3 committed breach of contract whether as a result of the letter written by the defendant no. 2 or not. According to his submission, the defendant no. 2 acted bonafide in pursuance of his responsibility arising on account of cement control order u/S. 3 of the Act. It was open to the defendant no. 3 and for that matter plaintiff and defendant no. 3 to oppose the request letter issued by the Collector. The defendant no. 3 could have continued the stockistship or the plaintiff could have claimed appropriate relief against defendant no. 3 only. Mr. Sheth finally submitted that there is no pleading with regard to any evil intention on the part of the defendant no. 2 with regard to alleged procurement of breach of contract. In any event there is a direct protection flowing from section 15 of the Act and the plaintiff would not be entitled to sue the defendant unless necessary averments referable to the said provision of law are made in the plaint.

10. Mr. R.C. Jani, Ld. Advocate for the plaintiff laid stress on the words 'good faith' appearing in the aforesaid provision and tried to submit that the action of the defendant no. 2 could not be said to be in good faith.

11. For the purpose of appreciating the submissions made on behalf of the rival parties on the maintainability of the suit, reference has first to be made to the communication exh. 76 issued by the Supply Department of the Government on 30/4/1973 to all the Collectors of the State. It has been recited that the production of cement has gone down and it was necessary to regulate distribution of cement in the market. Necessary arrangements were made in that respect in some districts, whereas in some districts such arrangements were yet not made and there were different standards and methods of regulating the supply of cement in the districts. In order that there might be uniformity in the matter of regulation of distribution of cement in all the districts, instructions were issued to the effect that persons, cooperative societies and institutions requiring cement for construction or repairs must get their requirement noted/registered before the district cement stockist, that two different registers must be maintained by the stockist for the purpose of noting the requests for supply of cement made by such parties, that in one register demands for supply of cement for repairs should be noted and in another register demands for supply of cement for new construction should be noted. The format of the register has also been set out in exh. 76. There are certain other requirements with regard to making of notes in various documents. The percentages of supply of cement for different purposes have also been set out in exh. 76. Suffice it to say that the Collectors were under Government instructions as per exh. 76 and it can hardly be said that actions of the Collectors were unregulated. Exh. 76 assumes importance in so far as the above provision of law is concerned.

12. The facts set out in the plaint might not be reiterated here. It is an admitted position that the irregularities as asserted in the plaint were noticed by the Supply Inspector and the Collector was appraised of the same and necessary actions were taken in that regard. It might be noted that plaintiff has not come out with a case that defendant no. 2, Collector, Mehsana had any evil intention against the plaintiff. No facts which would touch any interaction between the plaintiff and defendant no. 2 have been asserted in the plaint. Therefore, very important ingredient of tort of procuring



breach of contract in so far as first two defendants are concerned, namely that the party alleged to be responsible for procuring breach of contract must be shown to intend to interfere with the contract has not been pleaded in the plaint. That apart no reference with regard to how the plaintiff seeks exception from the aforesaid provision has been made in the plaint.

13. In the background of what is stated above, it would clearly appear that the plaintiff's suit was clearly misconceived and untenable against the State of Gujarat and its Collector, namely the first two defendants. Mr. Jani made a reference to decision of this Court in the case of S.D. Sharma v. Thakorlal Chhaganlal reported in 19 G.L.R. 332. However, the same will not apply to the present case both on facts as well as on pleadings. On a reference to the proceedings undertaken by the first two defendants it would clearly appear that action in accordance with law was taken. It is a different matter that on some grounds, technical or otherwise, the Sessions Court did not approve of the same as can be seen from the Rojnama of Criminal Appeal No. 86 of 1974 produced at exh. 82. The certified copy of the judgment appears at exh. 40. The Ld. Sessions Judge has held that the notice to show cause issued by the defendant no. 2 to Diwaliben, wife of the plaintiff, was legal and valid, but he found that there was no contravention on the part of Diwaliben in respect of the cement bags found from her possession. The said judgment does not deal with the alleged irregularities of the plaintiff as referred to by even the plaintiff from the notice of the defendant no.2. Thus merely because Diwaliben, the plaintiff's wife succeeded in the appeal, it may not be inferred that the defendant no. 2 lacked good faith in issuing letter dated 14/12/1974 to the defendant no.3. In fact there was no decision of the Sessions Court on the matter when the letter was written or the notice was issued. The defendant no. 2 could hardly be said to have acted in bad faith on account of a subsequent judgment in an appeal filed by the plaintiff's wife in respect of the stock of cement lying in her house. It would clearly appear that even these facts have been unnecessarily mixed up by the plaintiff. In my considered opinion the plaintiff's suit on the face of the averments made therein was not maintainable as the provision of section 15 of the Act clearly stared at the plaintiff.

14. Since this appeal is required to be allowed on the ground of maintainability of the suit, it has been jointly urged by the learned adbocate for the plaintiff

and the Ld. A.G.P. that the trial Court's judgment on the appreciation of the evidence in so far as the plaintiff and defendant no. 3 are concerned might not be dealt with. Even otherwise there is no appeal filed by defendant no.3. The defendant no. 3 did not contest the suit and has suffered the decree. Sufference of decree by him might ultimately be attributable to defendant no.3's act in breach of the contract between the plaintiff and the defendant no.3. This Court does not propose to express any opinion on that aspect of the matter. However, in so far as the first two defendants (appellants herein) are concerned, this appeal deserves to be allowed.

15. Following order is, therefore, passed :-

The judgment and decree in so far as the first two defendants are concerned (appellants herein are concerned) passed by the Ld. Civil Judge (S.D.), Mehsana on 3/10/1979 in Special Civil Suit No. 112 of 1976 are hereby set aside. This appeal is accordingly allowed with no order as to cost.

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PVR.